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3 Eastern District of Washington
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9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

1:20-06044-SMJ

13 v.

Plea Agreement

14 CRUZ JAMES SPENCER,

15 Defendant.
16
17
18

19 Plaintiff United States of America, by and through Joseph H. Harrington,
20 Acting United States Attorney for the Eastern District of Washington, and Michael
21 D. Murphy, Assistant United States Attorney, for the Eastern District of
22 Washington, and Defendant Cruz James Spencer (hereinafter "Defendant"), and
23 the Defendant's counsel, Nicholas Marchi, Esq., agree to the following Plea
24 Agreement:

25 1. Guilty Plea and Maximum Statutory Penalties: *Superseding Indictment* *CS* *nm*

26 The Defendant agrees to plead guilty to the Information charging the
27 Defendant with one count of Felon in Possession of a Firearm in violation of 18
28 U.S.C. §§ 922(g)(1), 924(a)(2).

1 The Defendant understands that the maximum statutory penalty for Felon in
2 Possession of a Firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), is 10
3 years imprisonment; a fine of \$250,000; or both; a term of supervised release of
4 not more than 3 years; and a \$100 special penalty assessment.

5 The Defendant understands that a violation of a condition of supervised
6 release carries an additional penalty of re-imprisonment for all or part of the term
7 of supervised release without credit for time previously served on post-release
8 supervision.

9
10 2. The Court is Not a Party to the Agreement:

11 The Court is not a party to this Plea Agreement and may accept or reject this
12 Plea Agreement. Sentencing is a matter that is solely within the discretion of the
13 Court. The Defendant understands that the Court is under no obligation to accept
14 any recommendations made by the United States and/or by the Defendant; that the
15 Court will obtain an independent report and sentencing recommendation from the
16 U.S. Probation Office; and that the Court may, in its discretion, impose any
17 sentence it deems appropriate up to the statutory maximums stated in this Plea
18 Agreement.

19 The Defendant acknowledges that no promises of any type have been made
20 to the Defendant with respect to the sentence the Court will impose in this matter.
21 The Defendant understands that the Court is required to consider the applicable
22 sentencing guideline range, but may depart upward or downward under the
23 appropriate circumstances.

24 The Defendant also understands that should the sentencing judge decide not
25 to accept any of the parties' recommendations, that decision is not a basis for
26 withdrawing from this Plea Agreement or a basis for withdrawing this plea of
27 guilty.
28

1 3. Waiver of Constitutional Rights:

2 The Defendant understands that by entering this plea of guilty the Defendant
3 is knowingly and voluntarily waiving certain constitutional rights, including:

- 4 a. The right to a jury trial;
5 b. The right to see, hear and question the witnesses;
6 c. The right to remain silent at trial;
7 d. The right to testify at trial; and
8 e. The right to compel witnesses to testify.

9 While the Defendant is waiving certain constitutional rights, the Defendant
10 understands the Defendant retains the right to be assisted through the sentencing
11 and any direct appeal of the conviction and sentence by an attorney, who will be
12 appointed at no cost if the Defendant cannot afford to hire an attorney.

13 4. Elements of the Offenses:

14 The United States and the Defendant agree that in order to convict the
15 Defendant of Felon in Possession of a Firearm, in violation of 18 U.S.C. §
16 922(g)(1), 924(a)(2), as charged in the Information, the United States must prove
17 beyond a reasonable doubt the following elements: ^{Superseding Indictment} *[Handwritten initials]*
18

19 First, on or about February 11, 2020, within the Eastern District of
20 Washington, the Defendant knowingly possessed a firearm, to wit: a Springfield
21 XD .40 caliber firearm, bearing serial number US357034;

22 Second, the firearm had been shipped or transported in interstate or foreign
23 commerce; and

24 Third, at the time the defendant possessed the above firearm, the Defendant
25 knew of his status as a person previously convicted of a crime punishable by
26 imprisonment for a term exceeding one year.

1 5. Factual Basis and Statement of Facts:

2 On February 11, 2020, Kennewick Police Department officers and the
3 United States Marshal's Pacific Northwest Violent Fugitive Task Force arrested
4 Cruz James Spencer at 1204 W 42nd Avenue, Kennewick, WA, for outstanding
5 felony warrants. Cruz James Spencer was searched incident to arrest and officers
6 located a Springfield XD-40 Sub-Compact .40 caliber pistol, bearing serial number
7 US357034A, in his waistband, which firearm was loaded with ten rounds of
8 ammunition. The Springfield XD-40 Sub-Compact pistol was manufactured in
9 Croatia and travelled in interstate and foreign commerce.

10 The Defendant's criminal history includes the prior felony convictions:
11 Attempting to Elude Pursuing Police Vehicle in 16-1-01048-6 in Benton County
12 Superior Court on November 16, 2016 and Assault in the Second Degree 10-1-
13 0029-8 in Benton County Superior Court on November 9, 2010. By on or about
14 November 10, 2010 the Defendant knew of his status as a person previously
15 convicted of a crime punishable by imprisonment for a term exceeding one year.

16 This statement of facts does not preclude either party from presenting and
17 arguing, for sentencing purposes, additional facts which are relevant to the
18 guideline computation or sentencing, unless otherwise prohibited in this
19 agreement.
20

21 6. Waiver of Inadmissibility of Statements:

22 The Defendant agrees to waive the inadmissibility of statements made in the
23 course of plea discussions with the United States, pursuant to Fed. R. Crim.
24 P. 11(f). This waiver shall apply if the Defendant withdraws this guilty plea or
25 breaches this Plea Agreement. The Defendant acknowledges that any statements
26 made by the Defendant to law enforcement agents in the course of plea discussions
27 in this case would be admissible against the Defendant in the United States' case-
28 in-chief if the Defendant were to withdraw or breach this Plea Agreement.

1 7. The United States Agrees Not to File Additional Charges:

2 The United States Attorney's Office for the Eastern District of Washington
3 agrees not to bring any additional charges against the Defendant based upon
4 information in its possession at the time of this Plea Agreement and arising out of
5 Defendant's conduct involving illegal activity charged in the Indictment, unless the
6 Defendant breaches this Plea Agreement any time before or after sentencing.

7 8. United States Sentencing Guideline Calculations:

8 The Defendant understands and acknowledges that the United States
9 Sentencing Guidelines (hereinafter "U.S.S.G.") are advisory to this case and that
10 the Court will determine the Defendant's applicable sentencing guideline range at
11 the time of sentencing.

12 a. Base Offense Level:

13 The United States and the Defendant agree that the Base Offense Level is 20
14 pursuant to U.S.S.G. § 2K2.1(a)(6).

15 b. Specific Offense Characteristics:

16 The United States and the Defendant have no agreement regarding which
17 specific offense characteristics may apply.

18 9. Acceptance of Responsibility:

19 If the Defendant pleads guilty and demonstrates a recognition and an
20 affirmative acceptance of personal responsibility for the criminal conduct; provides
21 complete and accurate information during the sentencing process; does not commit
22 nor is found to have committed any obstructive conduct; and accepts this Plea
23 Agreement, the United States recommend a two (2) level downward adjustment in
24 the offense level. U.S.S.G. §3E1.1(a). The United States will recommend a third
25 point pursuant to U.S.S.G. §3E1.1(b), if the adjusted offense level is sixteen (16),
26 or greater. The Defendant and the United States agree that the United States may
27 at its option, and upon written notice to the Defendant, not recommend the three
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1 (3) level downward reduction for acceptance of responsibility if, prior to the
2 imposition of sentence, the Defendant is charged or convicted of any criminal
3 offense whatsoever or if the Defendant tests positive for any controlled substance.

4 10. Criminal History:

5 The United States and the Defendant understand that the Defendant's
6 criminal history computation ultimately will be determined by the Court after
7 review of the Presentence Investigation Report. The United States and the
8 Defendant have made no agreement and make no representations as to the criminal
9 history category, which shall be determined after the Presentence Investigation
10 Report is completed.

11 11. Incarceration:

12 The United States agrees to recommend a sentence in the lower half of the
13 applicable guideline sentencing range as found by the Court. Defendant may
14 recommend any legal sentence.

15 12. Criminal Fine:

16 The United States and the Defendant recommend that there be no imposition
17 of a criminal fine.

18 13. Supervised Release:

19 The United States and the Defendant agree to recommend that the Court
20 impose a three (3)-year term of supervised release.

21 14. Mandatory Special Penalty Assessment:

22 The Defendant agrees to pay the \$100 mandatory special penalty assessment
23 to the Clerk of Court for the Eastern District of Washington, at or before
24 sentencing, pursuant to 18 U.S.C. § 3013 and shall provide a receipt from the Clerk
25 to the United States before sentencing as proof of this payment.

26 15. Payments While Incarcerated:

27 If the Defendant lacks the financial resources to pay the monetary
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1 obligations imposed by the Court, the Defendant agrees to earn the money to pay
2 toward these obligations by participating in the Bureau of Prisons' Inmate
3 Financial Responsibility Program.

4 16. Additional Violations of Law Can Void Plea Agreement:

5 The Defendant and the United States agree that the United States may at its
6 option and upon written notice to the Defendant, withdraw from this Plea
7 Agreement or modify its recommendation for sentence if, prior to the imposition of
8 sentence, the Defendant is charged or convicted of any criminal offense
9 whatsoever or if the Defendant tests positive for any controlled substance.

10 17. Criminal Forfeiture:

11 Defendant acknowledges that the firearm covered by this agreement would
12 be subject to forfeiture as property facilitating or involved in illegal conduct in
13 violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), Felon in Possession of a Firearm,
14 and is therefore forfeitable to the United States pursuant to 18 U.S.C. § 924(d)(1)
15 and 28 U.S.C. § 2461(c).

16 The Defendant agrees to hold all law enforcement and the United States, its
17 agents, and its employees harmless from any claims whatsoever arising in
18 connection with the seizure and forfeiture of any asset(s) covered by this
19 agreement. Defendant consents to the forfeiture and disposal of assets without
20 further notice.

21 The Defendant further agrees to waive all constitutional, equitable and
22 statutory challenges in any manner (including direct appeal, habeas corpus, or any
23 other means) to any forfeiture carried out in accordance with this Plea Agreement
24 on any grounds, including that the forfeiture constitutes an excessive fine or
25 punishment. Defendant knowingly and voluntarily waives his right to a jury trial
26 on the forfeiture of the asset(s). Defendant waives oral pronouncement of
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1 forfeiture at the time of sentencing, and any defects that may pertain to the
2 forfeiture.

3 18. Effect on Immigration Status:

4 The Defendant, recognizes that pleading guilty may have consequences with
5 respect to his immigration status if he is not a citizen of the United States. Under
6 federal law, a broad range of crimes are removable offenses, including the offense
7 to which the Defendant is pleading guilty. Indeed, due to the charge to which
8 Defendant is pleading guilty, removal is presumptively mandatory for non-citizens.
9 Removal and other immigration consequences are the subject of a separate
10 proceeding, however, and Defendant understands that while deportation and/or
11 removal appears to be a virtual certainty if he is a non-citizen, no one, including his
12 attorney or the Court, can predict with absolute certainty the effect of his
13 conviction on his immigration status, if any. Defendant nevertheless affirms that
14 he wants to plead guilty regardless of any immigration consequences that his plea
15 may entail, even if automatic removal from the United States is a virtual certainty
16 if he is a non-citizen.

17 19. Appeal Rights

18 The Defendant expressly waives his right to appeal any aspect of his
19 conviction and sentence imposed by the Court. Furthermore, the Defendant
20 expressly waives his right to file any post-conviction motion attacking his
21 conviction and sentence, including a motion pursuant to 28 U.S.C. § 2255, except
22 one based upon ineffective assistance of counsel based on information not now
23 known by Defendant and which, in the exercise of due diligence, could not be
24 known by Defendant by the time the Court imposes the sentence.

25 The Defendant acknowledges that this waiver shall result in the dismissal of
26 any appeal or collateral attack the defendant might file challenging the conviction
27
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1 or sentence in this case, except for ineffective assistance of counsel as noted above.
2 If the Defendant files a notice of appeal, a habeas petition, or other collateral
3 attack, notwithstanding this agreement, the Defendant agrees that this case shall,
4 upon motion of the government, be remanded to the district court to determine
5 whether Defendant is in breach of this agreement and, if so, to permit the
6 government to withdraw from the Plea Agreement.

7 20. Integration Clause:

8 The United States and the Defendant acknowledge that this document
9 constitutes the entire Plea Agreement between the United States and the
10 Defendant, and no other promises, agreements, or conditions exist between the
11 United States and the Defendant concerning the resolution of the case. This Plea
12 Agreement is binding only upon the United States Attorney's Office for the
13 Eastern District of Washington, and cannot bind other federal, state or local
14 authorities. The United States and the Defendant agree that this agreement cannot
15 be modified except in a writing that is signed by the United
16 States and the Defendant.
17

18
19
20 Approvals and Signatures

21 Agreed and submitted on behalf of the United States Attorney's Office for
22 the Eastern District of Washington.


23 Joseph H. Harrington
24 Acting United States Attorney

25 _____
26 Michael D. Murphy
27 Assistant United States Attorney
28

6/24/202


Date

1 I have read this Plea Agreement and have carefully reviewed and discussed
2 every part of the agreement with my attorney. I understand and voluntarily enter
3 into this Plea Agreement. Furthermore, I have consulted with my attorney about
4 my rights, I understand those rights, and I am satisfied with the representation of
5 my attorney in this case. No other promises or inducements have been made to
6 me, other than those contained in this Plea Agreement, and no one has threatened
7 or forced me in any way to enter into this Plea Agreement. I am agreeing to plead
8 guilty because I am guilty.

9
10 
11 Cruz James Spencer
12 Defendant

6/24/21
Date

13 I have read the Plea Agreement and have discussed the contents of the
14 agreement with my client. The Plea Agreement accurately and completely sets
15 forth the entirety of the agreement between the parties. I concur in my client's
16 decision to plead guilty as set forth in the Plea Agreement. There is no legal reason
17 why the Court should not accept the Defendant's plea of guilty.

18 
19 Nicholas Marchi
20 Attorney for the Defendant

6/24/21
Date